



**Videotaped Deposition of Patrick Smith - 02/25/2010**

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1 Phoenix, Arizona  
February 25, 2010  
2 8:14 a.m.

3 TRANSCRIPT OF PROCEEDINGS

4 THE VIDEOGRAPHER: Good morning. We are  
5 on the record. This is media No. 1 of the videotaped  
6 deposition of Patrick "Rick" Smith taken by the  
7 plaintiff in the matter of David Butler versus TASER  
8 International Incorporated, et al., Case No. CV161436  
9 filed in the Superior Court of the State of  
10 California for the County of Santa Cruz. Today is  
11 February 25, 2010, and the time is approximately 8:05  
12 a.m.

13 MR. BURTON: Look. It's 8:15.

14 THE VIDEOGRAPHER: I apologize. The time  
15 is approximately 8:15 a.m.

16 This deposition is taking place at Driver  
17 and Nix Court Reporters, 3131 East Clarendon Avenue,  
18 Suite 108, Phoenix, Arizona 85016. Your certified  
19 reporter is Kristy Ceton and Sarah Crider is your  
20 certified legal videographer, both appearing on  
21 behalf of Driver and Nix Court Reporters.

22 Please note that microphones are  
23 sensitive and may pick up whispers.

24 Would counsel please identify yourselves  
25 and state which party you represent.

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1 did not cause cardiac arrest or cardiac problems.  
2 The exact wording, you know, obviously I would want  
3 to see the document. There have been many versions  
4 of training, and I don't have them memorized  
5 verbatim.

6 Q. Well, when you were training these police  
7 officers that are using your device on human beings  
8 that this testing you're referring to showed safety  
9 margins, did you also tell these officers that the  
10 risk of cardiac arrest from Tas'ing someone in the  
11 chest could not be eliminated or was not zero?

12 A. I believe the way it was characterized in  
13 the training is that the possibility of inducing  
14 ventricular fibrillation was extremely low was the  
15 language that was used, which is nonzero, but  
16 extremely low.

17 Q. So is it your understanding that this  
18 risk of creating or causing cardiac arrest increases  
19 with the dart position closer to the location of the  
20 heart in the front of the chest?

21 A. I would agree that in animal studies, it  
22 has been shown that the closer the darts are to the  
23 heart, the more the probability that there may be  
24 cardiac stimulation.

25 Q. And when did you start warning police

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1 officers of that?

2 MS. GIBEAUT: Object to form.

3 Q. BY MR. BURTON: Well, okay. I'll  
4 rephrase.

5 When did you first come to that  
6 realization?

7 A. I don't recall the exact time period, but  
8 -- I don't recall the exact time period.

9 Q. Well, roughly what year?

10 A. I don't recall the time period.

11 Q. Well, was it last year?

12 A. Certainly by last year we were aware that  
13 in animal studies, if the darts are away from the  
14 heart, the risk in that case, I think, could be  
15 quantified to -- Again, even then, I don't think you  
16 can ever quantify it as zero. But certainly by 2009,  
17 we were aware that the dart-to-heart distance was a  
18 factor in terms of safety margins.

19 Q. Did you know that in 2005?

20 A. Again, I would have to see when various  
21 studies were published to put a date on it.

22 Q. Well, which study would you have to see  
23 when it was published?

24 A. I think the first study that discussed  
25 the topic of dart-to-heart distance may have been

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1 John Webster's work out of Wisconsin.

2 Q. Well, how about Dr. Lakkireddy and Dr.  
3 Tchou's work on the pigs that were under the  
4 influence of cocaine?

5 A. Yes. They also demonstrated that the  
6 safety margins were higher when the darts were  
7 further away from the cardiac access. However, I  
8 think it also is important that they demonstrated  
9 there was a significant safety margin, even in the  
10 worst case position of the electrodes.

11 Q. Well, in the worst case positioning of  
12 the electrodes, they got cardiac capture with  
13 five-second cycles, correct?

14 A. Correct.

15 Q. With standard X-26 current, correct?

16 A. I believe so. On at least some of the  
17 test subjects.

18 Q. And we're talking about the TASER-funded  
19 study or at least partially funded by TASER that was  
20 released in early 2006, correct?

21 A. Correct. Well, again, I -- I hesitate to  
22 confirm the date for that. I want to obviously look  
23 at the document. I don't know exactly when these  
24 studies were published, but that was a study that was  
25 funded by TASER.

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1           Q.   Now, prior to the initial release  
2 publicly of that data, were you told anything by any  
3 of the doctors that were involved in that research,  
4 that your company was partially funding, about what  
5 their results were?

6           A.   I believe there were some discussions  
7 with some of the researchers. I can't recall if it  
8 was in the context of -- what the context of the  
9 conversation was, but I believe we did have  
10 discussions about the results.

11          Q.   And would that include discussions with  
12 Dr. Patrick Tchou, T-c-h-o-u?

13          A.   I don't believe at the time I had  
14 personal conversations with Dr. Tchou. My  
15 conversations, I believe, were secondhand through  
16 either Mark Kroll or possibly Andrew Hinz.

17          Q.   H-i-n-z?

18          A.   I believe so.

19          Q.   Did you ever discuss these preliminary  
20 test results with Dr. Lakkireddy,  
21 L-a-k-k-i-r-e-d-d-y?

22          A.   I may have, but, for the most part, I  
23 believe the interchange was happening with Dr. Kroll  
24 who heads our advisory board.

25          Q.   So your understanding would be that Dr.

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1 Tchou or Dr. Lakkireddy or one of the other  
2 researchers would talk to Dr. Kroll and then Dr.  
3 Kroll would speak to you about it?

4 A. In generalities.

5 Q. Well, what did Dr. Kroll tell you?

6 A. The discussion centered primarily around  
7 the effects of cocaine. The primary focus of the  
8 study at Cleveland was to look into whether or not  
9 cocaine affected the ventricular fibrillation  
10 threshold.

11 And the general results of the study that  
12 were conveyed to me was that there were no events of  
13 ventricular fibrillation in any configuration of the  
14 probes -- that the introduction of cocaine actually  
15 increased the safety margin or the ventricular  
16 fibrillation threshold and the positioning of darts  
17 away from the chest area also increased the safety  
18 margins.

19 Q. Did Dr. Kroll tell you before the study  
20 was actually publicly released that the researchers  
21 had told him that they had documented cardiac capture  
22 in the test animals with a standard X-26 current when  
23 the darts were placed across the chest where the  
24 heart is?

25 A. I believe so. There were general

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1 discussions on the -- on the results and I think we  
2 discussed most of the key elements that were in the  
3 paper.

4 Q. And that would be how soon after the  
5 study started would you estimate?

6 A. That, I don't know. It's been five  
7 years.

8 Q. But this was some time around the end of  
9 19- -- I'm sorry. The end of 2005, the beginning of  
10 2006?

11 A. In that time frame, yes.

12 Q. And what steps did TASER International  
13 take during that time frame to inform its users,  
14 specifically in law enforcement, that research had  
15 disclosed that the risk of cardiac capture may  
16 increase with dart positions that are close to the  
17 heart?

18 A. The study itself, as soon as it was  
19 released, was placed in our compendium. I believe it  
20 was placed on our website for publication and I  
21 believe it was included in some of Dr. Kroll's  
22 presentations that he would do at varying times  
23 around the country on the topic of TASER effects.

24 I don't recall if we were doing chiefs'  
25 courses back then that we do today -- courses that



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1 Q. BY MR. BURTON: I don't mean to be rude  
2 or anything, but I didn't ask you what TASER did as  
3 follow-up for this or why they didn't tell officers  
4 about this finding. I just wanted to first establish  
5 the following.

6 In late 2005 or early 2006, TASER found  
7 out from researchers on a project that TASER  
8 partially funded that the dart position on the test  
9 animals affected the rate of cardiac capture,  
10 correct?

11 A. Yes, the position of the electrodes did  
12 have an effect on thresholds for -- be it for capture  
13 or fibrillation.

14 Q. Okay. So my question is, other than what  
15 you've already testified to about putting the study  
16 and the research compendium and having Dr. Kroll  
17 speak to the chiefs of police and so forth, what else  
18 did TASER do, let's say during the year 2006, to  
19 inform its users and consumers in the law enforcement  
20 community that it now had test results that showed  
21 that the location of the darts on its test -- on test  
22 animals affected the possibility of cardiac capture?

23 A. Again, as I mentioned, the studies were  
24 released, and we discussed this topic with our  
25 medical advisory board, and their advice was that

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1 there was -- there was not any -- This did not merit  
2 any changes in training or procedure. So the study  
3 was released. It was discussed publicly, but it did  
4 not impact training.

5 Q. Please name every member of the medical  
6 advisory board that TASER relied on in its decision  
7 not to, as you said, impact training with this new  
8 information.

9 A. Mark Kroll, Dr. Rick Luceri, Dr. Neil  
10 Hawkins, Dr. Robert Stratbucker. Dr. Jeff Ho is not  
11 on the advisory board but is someone who has  
12 consulted on safety issues. Dr. Charles Swerdlow,  
13 Dr. James Sweeney. And I believe discussions also  
14 included Drs. Lakkireddy and Tchou, who had performed  
15 the study.

16 Q. So the individuals that you just listed,  
17 it's your testimony that they were specifically in  
18 these discussions following the information acquired  
19 late 2005, early 2006, that dart location on test  
20 animals affected the rates of cardiac capture?

21 A. Yes.

22 Q. Okay. And was there -- there was some  
23 difference of opinion among this group of doctors?

24 A. I don't believe so.

25 Q. Well, hasn't Dr. Swerdlow's position been

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1 CERTIFICATE

2

3 I, Kristy A. Ceton, Certified Court

4 Reporter for the State of Arizona, certify:

5 That the foregoing deposition was taken

6 by me; that I am authorized to administer an oath;

7 that the witness, before testifying, was duly sworn

8 by me to testify to the whole truth; that the

9 questions propounded by counsel and the answers of

10 the witness were taken down by me in shorthand and

11 thereafter reduced to print by computer-aided

12 transcription under my direction; that deposition

13 review and signature was requested; that the

14 foregoing pages are a full, true, and accurate

15 transcript of all proceedings and testimony had upon

16 the taking of said deposition, all to the best of my

17 skill and ability.

18 I FURTHER CERTIFY that I am in no way

19 related to nor employed by any of the parties hereto

20 nor am I in any way interested in the outcome hereof.

21 DATED this 8th day of March, 2010.

22

23

\_\_\_\_\_  
Kristy A. Ceton

24 Certified Court Reporter No. 50200

For the State of Arizona

25